IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 26TH NOVEMBER 2007 / 5TH AGRAHAYANA 1929

Bail Appl..No. 6942 of 2007()

CRIME NO. 176/07 OF CHENGANNUR EXCISE RANGE

PETITIONER/2ND ACCUSED

GOPALAKRISHNAN @ GOPALI,
S/O KUNJUKUNJU, PALAIKKAD VEEDU,
THIRUVANVANDOOR MURI, THIRUVANVANDOOR VILLAGE,
CHENGANNUR TALUK.

BY ADV. SRI.P.GOPAKUMARAN NAIR
SRI.C.S.DIAS
SRI.AJITH MURALI

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. S.U. NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 26/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 6942 of 2007

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Dated this the 26th day of November, 2007

O R D E R

Application for anticipatory bail. The petitioner is arrayed as second accused in a crime registered under the Kerala Abkari Act. The crux of the allegations is that the first accused was intercepted with 4.8 litres of arrack at 6 p.m. on 11.10.2007. When he was arrested and interrogated, he allegedly furnished information to the Investigating Officers that it was the petitioner who used to supply arrack to him. It is on the basis of such statement of the first accused that the petitioner has been arrayed as the second accused. Though the seizure mahazar shows that the incident had taken place and the arrest was effected on 11.10.2007, in the occurrence report the date of arrest and occurrence are shown as 12.10.2007.

2. According to the petitioner, the petitioner has been falsely and unnecessarily dragged into the controversy in this case. He has nothing to do with this case at all. In support of his

contention he relies on the incongruities between the occurrence report and the seizure mahazar first. He further submits that the falsity of the theory that the petitioner was arrayed as an accused in this case is exposed by the undisputed fact that the petitioner as an accused in another earlier crime was physically present before the Excise Officials on 12.10.2007. But his arrest was not effected on such occasion. The learned counsel for the petitioner submits that the Excise officials, on account of their animosity, are going on implicating the petitioner in crimes unnecessarily. Even if the allegations were accepted in toto, except the statement of the first accused that it was the petitioner who made the contraband article available to him earlier, there is nothing to establish the nexus between the petitioner and the seizure of the contraband article in question. In the totality of facts and circumstances, the petitioner may be granted anticipatory bail, prays the learned counsel.

3. The learned Prosecutor does not oppose the application. But he submits that considering the totality of facts and circumstances and the incongruities pointed out in this case, subject to appropriate

conditions, which shall ensure the interests of a fair, efficient and expeditious investigation, the petitioner can be granted anticipatory bail.

4. Having considered all the relevant inputs, I am satisfied that directions under Section 438 Cr.P.C. can be issued in favour of the petitioner, subject to appropriate terms and conditions.

5. In the result:

(1) This application is allowed.

(2) The following directions are issued under Section 438 Cr.P.C.

(a) The petitioner shall surrender before the learned Magistrate on 3.12.2007 at 11 a.m. The learned Magistrate shall release the petitioner on regular bail on condition that he executes a bond for Rs.25,000/- (Rupees twenty five thousand only) with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate.

(b) The petitioner shall make himself available for interrogation before the Investigating Officer between 10 a.m. and 3 p.m. on

4.12.2007 and 5.12.2007 and thereafter on all Mondays and Fridays between 10 a.m. and 12 noon for a period of one month and subsequently as and when directed by the Investigating Officer in writing to do so.

(c) If the petitioner does not appear before the learned Magistrate as directed in clause (1) above, these directions shall lapse on 3.12.07 and the police shall be at liberty thereafter to arrest the petitioner and deal with him in accordance with law.

(d) If the petitioner were arrested prior to his surrender on 3.12.2007 as directed in clause (1) above, he shall be released on bail on his executing a bond for Rs.50,000/- without any surety undertaking to appear before the learned Magistrate on 3.12.2007.

(R. BASANT)
Judge

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